IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 37 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

BABULAL VIRCHANDJI THAKKAR

Appearance:

Mr. S.S.Patel, ASSTT . GOVERNMENT PLEADER for the appellant.

MR A.J.Patel for Mr. Mehul Rathod for the Respondent no. 1.

NOTICE SERVED for Respondent No. 2

MR BG JANI for Respondent No. 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 04/04/2000

ORAL JUDGEMENT

This appeal has been filed against

judgment and order dated 15.9.94 in Regular Civil Appeal No. 6 of 1987 passed by the learned Extra Assistant Judge, Banaskantha at Palanpur by which the judgment and decree dated 9.2.87 in Regular Civil Suit No. 132 of 1978 passed by the 2nd Joint Civil Judge (S.D.), Palanpur has been confirmed.

2. The defendant no.2 purchased survey no. 7/2 paiki admeasuring 1 acres 27 gunthas from the defendant no.3 for Rs.1400/- by a registered sale deed dated 9th June, 1969. The defendant no.2 was a Karta of the Joint Hindu Family and he purchased the aforesaid property in that capacity. The partition took place amongst family members and that property came to the share of the plaintiff and mutation entry was effected on 1.8.75 in favour of the respondent no.1.(original plaintiff) and the respondent no.1-original plaintiff is in possession since the date of the partition and his name appears in the revenue record. He used the land for running a hotel as the land was purchased for non-agricultural purpose. The Deputy Collector, Palanpur issued a notice to the respsondent no.2-original defendant no. 2, brother of the plaintiff stating therein that because of the sale, there was a breach of the provisions of The Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as the "Act"). The said notice was also issued to the defendant nos. 2 and 3 also. It is stated that the sale was void being in contravention of the Act. The seller and purchasers appeared before the Deputy Collector, on 18.4.77. The defendant no.2 did not remain present before the Deputy Collector on 25.4.77. The Deputy Collector, Palanapur held that the land sold is a fragmentation land and therefore, the said sale was void under the Act. The defendant no.2 filed Revision Application before the State of Gujarat, but that was also dismissed. Thereupon, the defendant no.3 informed the plaintiff that he was required to vacate the suit land and after coming to know about the order of the Deputy Collector, the respondent no. 1-original plaintiff came to know about all the proceedings conducted behind his back. The plaintiff therefore, filed the aforesaid suit for a permanent injunction restraining the appellant-State of Gujarat from obstructing or otherwise interfering with the enjoyment of the suit land by the plaintiff under the orders at mark 35/5 and exh.16 and restraining from taking away possession of the suit land acting under the aforesaid two orders, on the assertion tht he came to know that the whole proceedings were initiate behind his back and they are wrong and illegal as the plaintiff was not served

with the notice though he was in actual possession and he was not given an opportunity of hearing, hence the orders were void ab initio and that those orders were against principles of natural justice. The suit land was sold for non-agricultural purpose and hence the provisions of the Act were not applicable. The sale of the land in dispute has not caused any fragmentation. The land was bifurcated by passing and crossing the road through that land. It was the last portion of the land when the land in question was purchased. It was also asserte that the order was passed by Shri J B Gupta who was only a Mamlatdar and he was incharge of the Deputy Collector as Deputy Collector was on leave. Mr. J.B.Gupta was not appointed as a Deputy Collector or Collector, hence the order passed by Mr. J.B.Gupta, incharge Deputy Collector was without authority of law and the said order was void ab initio.

3. The appellant-original defendant no.1 State filed its written statement and denied the averments made in the plaint. It is contended that the defendant no.2 has purchased 1 acre of land from surv ey no.7/2 situated in the sim of village Akol Moti and entry no. 238 to that effect was made. As such, the said transaction was in contravention of the provisions of the Act. The order of the Deputy Collector is legal and valid one which was upheld by the Special Secretary to the Government. The plaintiff was not a party, but he did not apply on 19.5.78 and 13.7.78 for his impleadment as a party in the proceedings though he was in full knowledge of the said proceedings. The order of the Deputy Collector and Special Secretary are not void, illegal and without authority and against principles of natural justice. Such orders are in rem and they are binding even to thirty parties. Mr. J.P.Gupta was in charge Deputy Collector at the relevant time. He passed the order as Deputy Collector and that order has been confirmed by the Special Secretary in Revision.

4. From the pleadings of the parties, the trial court framed five issues for its determination and after going through the documentary as well as oral evidence and after hearing the arguments of the parties, the trial Court by its judgment and decree dated 9th February, 1987 decreed the suit with costs and appellant-defendant no.1 State of Gujarat was permanently restrained from obstructing or otherwise interfering with the enjoyment of the suit land by the plaintiff under the orders at marks 35/5 and exh.60 and also restraining from taking away possession of the suit land from the plaintiff acting under the aforesaid two orders.

5. Being aggrieved and dissatisfied with the said judgment and decree, the appellant State of Gujarat preferred Regular Civil Appeal NO. 6 of 1987 before District Court, Sabarkantha at Palanpur. The learned Extra Assistant Judge, Palanpur, after minutely going through the evidence on record and after hearing the submissions of the rival parties, dismissed the appeal and affirmed the findings recorded by the learned tiral Judge. Therefore, the appellant State of Gujarat has preferred this Second Appeal before this Court against concurrent findings of both the courts below.

6. The learned Assistant Government Pleader has framed five substantial questions of law for the decision of this Court.

First of all, the learned A.G.P. raised a question that section 36-A of the Act clearly bars the jurisdiction of the Civil Court to entertain and decide the matter in dispute. Section 36-A of the Act provides that no Civil Court or Mamlatdar's Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the State Government or any officer or authority and those orders will be deemed to be final orders and they cannot be questioned in any Civil, Criminal or Mamlatdar's Court. In this respect, the learned A.G.P. submitted that if the order passed by any Tribunal is not complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure, the Civil Court will have jurisdiction to decide the same and exclusion of jurisdiction of the Civil Court is not readily to be interferred with unless certain conditions set down apply. In this regard, he relied on the decision of the Supreme Court in the case of Dhulabhai etc. vs. State of Madhya Pradesh vs. State of Madhya Pradesh and another reported in AIR 1969, SC, 78 wherein the Apex Court has laid down certain principles regarding exclusion of jurisdiction of the Civil Court in seven circumstances. The relevant conditions are nos. 1 and 7 which read as under:

(1) Where the statute gives a finality to the orders of the special tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in a suit. Such provisions, however, does not exclude those cases

where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental priniples of judicial procedure.

(7) An exclusion of jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.

7. I have considered this aspect. No doubt, section 36-B of the Act bars the jurisdiction of the Civil Court to take cognizance for settlement, decision of any case which is covered under the provisions of this Act. But in the present case, the property was purchased by the defendant no. 2 from the defendant no. 3. The defendant no. 2 acted as a Karta of the family and the purchase of that property was also for the benefit of the family. The partition took place in the family and that property came to the share of the respondent no.1 -plaintiff. In that respect, the property was entered into revenue record vide entry no. 387 on 1.8.75 in the name of the plaintiff and proceedings in the revenue record were initiated on 5.4.77. The provisions of section 9 of the Act provide that

(1) Transfer or partition of any land contrary to the provisions of this Act shall be void.

(2) The owner of any land so transferred or partitioned shall be liable to pay such fine not exceeding Rs. 250 as the Collector may, subject to the general orders of the Government direct. (Such fine shall be recoverable as an arrear of land revenue).

(3) Any person unauthorisedly occupying or wrongfully in possession of, any land, the transf er or partition of which, either by the act of parties or by the operation of law, is void under the provisions of this Act, may be summarily evicted by the Collector.

8. In the present case, according to the appellant State, the the plaintiff was unlawfully and wrongfully occupying the property. As such, the plaint iff is also liable for summary eviction by the Collector. In the revenue proceedings, the plaintiff was never made a party and whole proceedings were conducted behind the back of the plaintiff. Thus, the proceedings conduct ed

before Revenue authorities were against principles of natural justice, wherein the plaintiff being in possession can be summarily evicted, though for that eviction procedure has been laid down under section 202 of the Bombay Land Revenue Code. Secction 202 of the Code reads as under:

"Whenever it is provided by this, or by any other Act for the time being in force, that the Collector may or shall evict any person wrongfully in possession of land, such eviction shall be made in the following manner, viz:

by serving a notice on the person or persons in possession requiring them within such time as may appear reasonable after receipt of the said notice to vacate the land, and,

if such notice is not obeyed by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and,

if the officer removing any such person shall be resisted or obstruct ed by any person, the Collector, shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause, and that such resistance and obstruction still continue, may, without prejudice to any proceedings to which such person may be liable under any law for the time being in force for the punishment of such resistance or obstruction, issue a warrant for the arrest of the said person, and on his appearance commit him to close custody in the office of the Collector or of any Mamlatdar or Mahalkari, or send him with a warrant, i n the form of Schedule I, for imprisonment in the civil jail of the district for such period not exceeding thirty days, as may be necessary to prevent t he continuance of such obstruction or resistance."

9. Thus, the plaintiff being in possession and occupation was a necessary party in the proceedings. Before the revenue authorities, the plaintiff was not made a party and all the proceedings were held behind him and even no notice was issued to him nor any opportunity of hearing was given to him though the authorities were within the knowledge of the fact that the plaintiff was the only person in occupation as would appear from the revenue entry no.387 dated 1.8.75. As such, the revenue authorities have not followed the principles of natural justice in conducting the proceedings. Therefore, the orders passed by the revenue authorities are void ab initio and cannot be enforced and binding upon the plaintiff in view of the guidelines laid by the Supreme

Court in the case of Dhulabhai vs. Staste of Madhya Pradesh (Supra), the Civil Court has jurisdiction to decide the same. The plaintiff was under an apprehension on the basis of the orders passed by the revenue authorities that he will be evicted at any time. Hence, he filed suit and that suit is entertainable and the trial court was fully justified in entertaining and deciding the matter in dispute.

10. The next question is regarding the fact whether the Mamlatdar who was in charge of the Deputy Collector had jurisdiction to pass appropriate orders in the revenue proceedings. It is well settled rule that whenever power is conferred on the person designate, the power shall be exercised by that person only. In the present case, the powers have been conferred on the Collector only and that power had been delegated to the Deputy Collector and the Mamlatdar in-charge of the Deputy Collector cannot exercise those powers. Secondly, the Mamlatdar Mr. Gupta being Mamlatdar was given additional charge of Deputy Collector for administrative work. Hence, he was not empowered to exercise the powers of the Collector under the provisions of the Act. As such, Mr. Gupta holding additional charge of the Deputy Collector was not competent to decide the matter on behalf of the Deputy Collector who was delegated powers of the Collector. The learned AGP also referred the provisions of section 36-B of the Act wherein it is provided that if any suit instituted in any civil court or Mamlatdar's Court involves an issue which is required to be settled, decided or dealt with by any authority competent to settle, decide or deaal with, the Civil Court or the Mamlatdar's Court is required to stay the suit and refer such issues to the competent authority for determination. If such issue is required to be decided by the Civil Court or Mamlatdar's court, the competent authority is required to deal with and decide such issues in accordance with the provisions of the Act. But in the instant case, the State Government has not applied to the Civil Court that the matter is to be settled by the revenue authority and that issue should be remanded to the revenue authorities for decision in accordance with law. For that purpose, the plaintiff cannot be held responsible as that action should have been taken by the State Government at the relevant time. Even appellant State has not raised this question before the trial court. Thus, there is no fault on the part of the plaintiff in this respect and at this stage, the State Government cannot say that the matter in dispute ought to have been referred to the revenue authorities under the

provisions of section 36-B of the Act. As such, the State Government had an ample opportunity to apply to the court concerned at the relevant time, which it has not done.

11. Considering the facts and circumstances of the case, in this case, I do not find that this case involves any substantial question of law for the decision of this Court. Hence, this appeal is dismissed. Rule is discharged with no order as to costs.

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